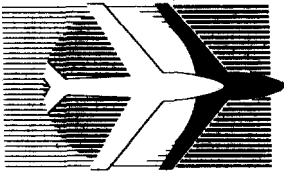


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McCARRAN INTERNATIONAL AIRPORT

October 29, 1997

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97-182  
Department of Aviation

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Office of the Secretary  
Federal Communications Commission  
Attn: William Caton, Secretary  
1919 M Street, N.W.  
Washington, DC 20554-0001

**RE: FCC NOTICE OF PROPOSED RULEMAKING  
MM DOCKET No. 97-296**

To whom it may concern:

**Background**

In a rulemaking petition filed by the National Association of Broadcasters and the Association of Maximum Service Television (hereinafter "the Petitioners"), the Federal Communications Commission (hereinafter "the FCC") was asked to adopt a rule preempting state and local laws, ordinances and procedures that could delay the siting, placement and construction of broadcast towers.

In its Notice of Proposed Rulemaking (hereinafter "NPRM") dated August 18, 1997, the FCC "seeks to define those circumstances in which it may be necessary to preempt state and local regulations in order to achieve the benefits of a rapid roll-out of DTV" (DTV is an acronym for Digital Television service). The FCC states it has the power to preempt state and local land use and zoning restrictions where these present "an obstacle to the accomplishment and execution of the full objectives of Congress" or where the FCC finds preemption is necessary to achieve the agency's purposes.

**Comments**

The Clark County Department of Aviation (hereinafter "the Department") believes there is no substantive basis, cause or reason for the FCC, in the interest of expediting DTV broadcast tower construction, to preempt state and local land use and zoning authorities. The Department further believes that Congress, in its direction to the FCC, never intended or envisioned a federal government agency would attempt to preempt what is a fundamental local decision making process.

The Constitution of the United States specifically states that all powers and authority not granted under the Constitution to the federal government are reserved to the States. The control over



**Mission Statement:**

*To provide the traveling public with safe and convenient passage through  
Clark County Airports by fostering an environment rich in quality customer service.*

Clark County Board of Commissioners

Yvonne Atkinson Gates, Chair • Lorraine T. Hunt, Vice-Chair

Erin Kenny • Mary J. Kincaid • Lance M. Malone • Myrna Williams • Bruce L. Woodbury

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land use and zoning issues is one such authority which has steadfastly remained within the domain of state and local governments. So strongly held is the state and local sovereignty over land use and zoning decisions that even in a case of public safety and adverse impact on interstate commerce, such as might be posed by construction near an airport, the federal government, through its Federal Aviation Administration (hereinafter "the FAA"), is powerless to preempt the local approval process.

State and local governments should not be held to artificially established review schedules created simply to service the needs of a single industrial sector. The FCC has provided no data to substantiate that tower construction delays arising from state and local land use and zoning processes would pose a significant impact. The Department considers only national security interests and public safety as valid reasons that the FCC could cite that would warrant federal preemption of this local authority. Neither of these is mentioned in the Petitioners' proposal or the FCC's NPRM.

Nowhere in the Petitioners' request of the FCC's rulemaking is the time period associated with the conduct of an FAA obstruction evaluation/airport airspace analysis addressed. This evaluation ensures the proposed construction will not, upon completion, pose a hazard to flight operations and is conducted under the authority provided in Federal Aviation Regulation Part 77. The Part 77 airspace analysis is required in both the case of new construction and alterations to existing structures. The time required for the FAA staff to complete its review of a construction proposal can range from 30 to 60 days after receipt of a filing by the construction proponent.

The FAA airspace analysis findings are, in many instances, considered by state or local governments before action is taken on a land use or zoning change request. The findings and recommendations arising from the FAA study go far beyond the issues of marking and lighting addressed in the FCC's NPRM. It is therefore, inappropriate to set a deadline on state and local government actions when the timing of such actions may be subject to delays within the federal government.

Further, the FAA airspace review ensures that federal investment in the acquisition, construction, operation and maintenance of airports and air navigation aids will not be diminished as a result of the proposed construction. The federal government commits over \$2 billion annually to the nation's air transportation system. Our nation's airports and airspace are a limited resource. Once allocated to an alternative use, it is nearly impossible to recover land for an airport or airspace for flight operations. The Petitioners' would have the FCC, a federal agency with little or no airspace and airport management expertise, render decisions impacting those resources.

Finally, the Petitioners are also seeking to expand the scope of tower projects over which the FCC could exercise its local exemption powers well beyond simply those needed for DTV. This is a blatant attempt, by industry, to excuse themselves from the state and local government review

process. Undoubtedly, all utilities and service providers, as well as many real estate developers and others, would find life easier if they did not have to deal through state and local governments. Land use and zoning decisions, though, have a very real impact on citizens where they live and work. Therefore, it is right and proper that these decisions remain at the state and local levels of government, unconstrained by deadlines imposed solely for the benefit of a few.

Summary

Several key points warrant reiteration.

1. The federal government has, constitutionally, no role in the land use and zoning process. This authority resides solely with state and local government. There is no definitive reason why the Federal Communications Commission should preempt state and local authority to satisfy an artificially established schedule for the conversion to DTV.
2. All new broadcast tower construction, and most tower alterations, will be subject to review by the Federal Aviation Administration. This review will determine if the proposal can be accommodated without an undue impact on airports or the airspace. Further, the FAA's review will establish the requirements for marking and lighting.
3. State and local government review of any land use and zone change proposal should proceed only after the FAA's review is complete. Local public notice and hearing requirements are adopted to ensure all impacted parties have an opportunity to comment before a decision is reached.

Sincerely,



RANDALL H. WALKER  
Director of Aviation

RHW:dl

cc: Clark County Board of Commissioners  
Nevada Congressional Delegation  
Rosemary Vassiliadis  
Jacob Snow, A.A.E.  
Tina Quigley  
Dennis W. Mewshaw